



2009

المحتوى

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4	1.1
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20	1.2
21	1.1.2
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34	1.2.2
41	2.2.2
62	3.2
62	1.3.2
67	2.3.2
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74	1.3

75		1.1.3
85		2.1.3
89		2.3
90		1.2.3
100		2.2.3
111		3.3
111	" "	1.3.3
115		2.3.3
121		4.3
	2001 (85)	
121		1.4.3
130		2.4.3 مدى الاعتماد بالتوقيع الإلكتروني كدليل في الإثبات
137		
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الصفحة

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Hash function

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(ATM)

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2009

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Abstract

Authentic electronic signature in civil and commercial transactions Comparative study

Eman Abdulmajeed Al-Awabdeh

Mu'tah University, 2009

The scientific development of information technology has come up with anew form of "writing". The traditional form of writing is no longer able to achieve its purpose ,particularly in electronic transactions in both civil and commercial matters. The E-Commerce has necessitated the use anew form of authentication tool; it is the Electronic Signature which consists of one or more letters, characters, numbers or other symbols in digital form incorporated in, attached to or associated with an electronic document. There exists many legal and practical issues regarding the legal value of Electronic Signature in proof .Although E-messages may often include information about the entity sending a message ,that information may not be accurate .E-signatures can be used to authenticate the source of messages.When ownership of a digital signature secret Key is bound to a specific user, a valid signature shows that the message was sent by that user. The importance of these issues has led the International organizations to draft model laws on E-Commerce and E-Signatures.

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.327 2005

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.78-77 2006

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.20 1999

(4) Berlioz –Houin (B.) et Berlioz (G.): le droit des contrats face a
l'evolution econiomique, etudes a R. Houin 1985, p. 11.

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.168 1990

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1991

.125

une inscription " :⁽¹⁾ "Robert"
 qu'une personne fait de son nom (sous une forme particuliere et
 constitue) pour affirmer l'exactitude.la sincerrite du'n ecrit ou en
 assumer la responsabilite".

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"constitue une signature valable toute marque distincte et personnelle manuscrite permettant d'individualiser son doute possible et traduisant la volonté non équivoque de celui-ci de consentir à l'acte."⁽⁴⁾

"La signature de l'acte est la seule formalité essentielle pour la validité des actes sous seing privé"⁽⁵⁾.

(1) Deverys (C.): du sceau numérique à la signature numérique, Rops.OJ,T.L, 33.Dhenin , vers une administration sans papier, paris, la documentation française, 1996,P.96.

(2)

.12 1993

1993/1/14 137-28-44

(3)

(4) Paris 22 mai 1975, D. 1976, Somm. 8.

(5) Cass. Civ. 15 juill . 1957:D. 1957, somm. 143.

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1963

(1/11)

" : 2005 16

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.302 37 1986/3/6 52 2138 (1)

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Ghestin (J), et Goubleaux (G.): triate de droit civil, introduction generale,
3e ed., paris, 1990, p. 590.

.357 -29 -1978 /1/31 4 527 (3)

16) 1966/380 (110)

: (1966

'la letter de change contient :... 8-la signature de celui qui emet
la letter (trieur) cette signature est appose, soit a la main, soit
par tout procede non manuscript

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.58 -16 -1965/1/14 30 (15) (4)

(5) C. A., paris , 22 mai 1978, D 1979, somm, p. 8.

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2003

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1998 (2)

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.236 1997

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(4) Ghestin (J). et Goubleaux (G.): op. cit, 590.

(5) Cass. civ. 15 mai 1993, R.T.D.civ. 1994, 167.

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. 60 2803 1991/3/4 (1)

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2005

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	1998-5-19	1998-449			(¹)
	.1998-1-1	5		548	
1323	89-268-26		1975	28	(2)
		.86			(3)
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"Ses heritiers ou ayants cause peuvent se contenter de declarer qu ils ne connassent point lecriture ou la signature de leur auteur".					
		1958\11\13	52	539	(5)

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.231-228

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"les Etats veillent a' ce que leur systeme juridique rende possible la conclusion des contrats par voie elctronique. Les Etats member's assurent notamment que le regime juridqiue applicable en processus contractual ne fasse pas abstacle aI utilization des contrats electroniques au ne conduise pas a priver d'cefect et de vabiclite juridique de tells contrats pour le motif qu'ils sont passe's par voie electronique".

2004

.55

- (2) Sinis vinenzo , digital signature legislation in Europe, international business lawyer, December 2000, vol 28 , no 11, p 487, laetitia Rolin jacquemyns Et thibault verbiest , L'offre De services et de prouduits financiers sur intend , p.19 .
- (3) Sinis vinenzo, digital signature legislation in Europe, international business lawyer, December 2000, vol 28, no 11, p 487, laetitia Rolin jacquemyns Et thibault verbiest, L'offre De services et de prouduits financiers sur intend, p. 19 .
- (4) Sinsi Vienzo , digital signature legislation in Europe , op , cit. pp. 487-490.

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.1

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(9/102)

2000/10/1

2000/6/3

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.1851

(2) 102/9 "an electronic sound symbol or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record".

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4/1316

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E. Sign 2000

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.403 2008

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.53 2006

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.44 2007

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271 /98

(3) John D. Gregory, Canadian and American legislation on electronic signatures with reflection on the European union directive, p15 .

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[http:// pages. Ca. inter.net/~euclid1/esiglaws.htun](http://pages.Ca.inter.net/~euclid1/esiglaws.htun)

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 : ⁽¹⁾1999 30-23 (A/9)

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(/9) (1)

1999

(9/a) : " An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable".

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2004 (15)

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2002 (2)

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uncttral law of electrons signature

.173

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E.davio Internet face au deroit, Cahier du C.R.I.D., N12; Ed :

Story Scientica, 1997, p. 80.

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.591 2003 12-10
.38 (2)
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.3 2000

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1989

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"The digital signature is a short unit of data that bears a mathematical relationship to the data in the document's content"⁽⁴⁾.

.41

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.246

1989

8

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Cass. Civ., 8 novembre.1989,

. cre'dicas

Dalloz, 28 Juin 1990 m n.25.

(4)

.44

⋮

⋅

⋮

⋮

2.2

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⋮()

) (Biometric signature)

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finger prints

(2) voice recognition

retinal scan

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.158 2006

.424

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() **"Pen-op"** :
Electronic pen

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.112 1998

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.The signature capture service .1

(2) . The signature verification service .2

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() :(personalidentification number)

"ATM"

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oK. (PIN)

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.422

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.94-93

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(Digital Signature)

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.Encryption

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:Symmetric "

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Asymetrique

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$$\begin{array}{r} : \\ : \end{array} \quad -2$$
$$:\left(\begin{array}{c} \vdots \\ \vdots \end{array} \right)$$

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⁽⁴⁾ (HASH)
$$- \quad (1)$$

.185 2002

$$: \quad (2)$$

Schneier (B) :Cryptography Applique International Thomas, on
Publishing Frame 1994, P.197

.61 (3)

$$: \quad (\text{Hash Function}) \quad (4)$$

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(on- line)

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www.sheikhmohammed.com.ae

.94-93

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1914

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:Debit Card () -1

(on-line) (3)
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(off-line)

.279 (1)

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.130 2004

.102 (3)

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. "la carte bleu" :
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Charge Card " " **-2**

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) (ATM) Automated Teller Machine -3
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Credit Card : -4

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.12 2000 10 19 "

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1996/ /17-16

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.4 2000/ /3

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.American express⁽¹⁾ visa-master card

Internet Card : -5

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(password)

(user ID)

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.38-37 2002

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.⁽¹⁾ count)

(8) **Smart Cards :** **-6**

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(biometrics)

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.137-136

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.54 1999

.141

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(Microprocessor)

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(Citibank)

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(2)

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1997

"European Initiative in Electronic Commerce" ⁽³⁾

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.31

P36

(2)

.33

(3) The economic and social committee of the regions :An European Initiative in Electronic commerce communication to the European parliament, the council: com(97) 15.

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:(PIN)

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.116

.39

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(E-electronic)

(business to consumer)

(¹) Thomson west: E-commerce, The Internet, and law Cases and materials, American Casebook Series, p 51-53

<http://www.al-jazirah.com/digimag/15022004/elc74.htm>

(business to business) .2

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¹(E- bay)

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(Electronic- checks) : -1

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[/http://ar.wikipedia.org/wiki](http://ar.wikipedia.org/wiki) (1)

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clearing house ()

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92 (3)

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(1) Kosiur, David. Understanding Electronic Commerce, Microsoft Press, USA,1997, p. 51-52.

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2000 237 20

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116

" 117 (3)

.27 "

(4) Kosiur, David. Understanding Electronic Commerce, Microsoft Press. USA, 1997, p. 53.

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(E- BILL OF LADING):

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.49 2005

www.a3mal.info/showthread. (2)

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$$.101-100 \quad 1998 \quad (3)$$

.43-42 (4)

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. www.freightdata.com

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2000

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www.emirsal.com " "

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.599

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2-1 2001

.7

"Chatting"

.1

chatting

" : chatting

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.Chatting

"central server"

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chat room

e-mail

chatting

e-mail

e-mail

(1) <http://searchsoa.techtarget.com/sdefinition/sid26-gci211777100.htm>

(2) www.smartcomputing.com/articals.archive/r0502/18r02/18r02.pd2.guie/

⁽¹⁾ **E-mail :** .2

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"E-mail"

- - "Ray Tomlinson" "

send

message

cypnet

Ray Tomlinson ⁽⁴⁾

electronic mail (1)

carrier

electronique

" " (2)

.80 2000 7 2000 - 6 19

(3) Andr e Bertrand: Internet et le droit, presses universitaires de
france, 1999, p. 57 .

(4)

www.c.arad.com. :

1971

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chez at

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- (2) "ou' ils de'finissent le courrier e'lectronique comme"une facult'e d
E'change asynchrone des messages entre ordinateurs
- p.breese et G. kaufman, quide Juridique de l'internet et du commerce
`electronique, vuibert,2000,p77.
- (3) "Method permettant d'e'changer des messages e'crits entre diff'e'rents
postes d'un r'eseau informatique".
- F. Colantonio, la protection du secret des couriers e'lectroniques en
Belgique : Aspect techniques, des criminology, 2002, p. 9.
- (4) "Electronic mail is" "a document created or received on an electronic
mail system including brief notes, more formal or substantive
narrative documents, and any attachments, such as word processing
and other electronic documents. Which may be transmitted with
message". :

.322

.13 2005

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1986
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22
" : 2004

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2001 (85)
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- Karen M., Coon, E-mail, and the attorney-client privilege
Richmond journal of law and Technology, 2001.

www.Richmond.edu :

- (1) The electronic communication privacy act of 1986-ECPA.
- (2) The Electronic mail defined as: A form of communication by which private correspondence is transmitted over public and private telephone lines. in its most common form, messages are typed in to a computer terminal, and then transmitted over telephone lines to a recipient computer operated by an electronic mail company .if the intended addressee subscribes to the service, the message is stored by the company's computer "mail box" until the subscriber calls the company to retrieve its mail, which is then routed over the telephone system to the recipient's computer".

. www.findlaw.com :

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(3) Kosiur, David, Understanding Electronic Commerce, op. cit, p. 39.

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	.84			(3)
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(¹) Thomson West: E-Commerce, The Internet, and law Cases and materials, American Casebook Series, p 45-49.

.445-446 (2)

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(²) Thomson west: E-commerce, the internet, and law cases and materials,
American casebook series, p 50 .

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2004 15 (18) "...

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.1689	1989	9	38	(1986/640)	

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(1) J.carbonnier, droit civil, introduction, less personnes, PUF.paris 1991, no.182; j. GHESTIN, G. GOUBEAUX et M fabre_ magnan, traite de drott civil, introduction, generale, lgdj, paris 1994,NO.564; G. virassamy, note sous Cass. Civil. 1 ere, 8 nov. 1989. JCP 1990-1-21576, No. 4.

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(4) J.CARBONNIER, OP.cit.no.182, J.GHESTIN et autres ,OP, cit, no. 567.

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Art. 1315." celui qui réclame l'exécution d'une obligation doit la prouver.
Réciproquement, celui qui se prétend libéré, doit justifier le paiement ou
le fait qui a produit l'extinction de son obligation".

: (1971 71-941 du 26 nov.)

- " qui se rattachent au droit civil et particulièrement aux actes notariés,
considérés comme actes authentiques, à l'exclusion de ceux qui
concernent uniquement l'organisation et le régime du notariat.

(3) Cass.civ.3, 16 nov, 1997, Bull. Civ, II, n.993, p.300.

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(2) C.A. Paris 15 ch.B, 29 mars 1985, reformation, de T.G.I. de Bobiogny
6 ch. 21 sept. 1982: D.1986,I.R..327, obs: Vasseur (M).

(3) Cass. Civ. 2 janv. 1998, D.1998, p. 192.

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إِلَى أَجَلٍ مُّسَمًّى فَارْكَبُوهُ وَلْيَنْكُتْ بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ﴾ (3).

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Danniel ammar: prevue et vraismbalance, contribution a l'etude de la
prevue technologique, RTD cv.n 3, juillet-september 1993, P499 et s.

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ci-dessus recoivent encore exception lorsque l'obligation est née d'un quasi-
contrat, d'un délit ou d'un quasi-délit, ou lorsque l'une des parties, soit na

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pas eu la possibilite materielle ou morale de se procurer une prevue litterale de lacte juridique , soit a perdu le titre que lui servait de prevue litterale , par suite dun cas fortuit ou dune force majeure. Elles recoivent aussi exception lorsque une partie ou le depositaire na pas conserve le titre original et present une copie qui en est la repro-duction non seulement fidele mais aussi durable . est repute durable toute reproduction indelebile de loriginal que entraine une modifica- tion irreversible du support." .

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(1) Sinsi , vin cenzo, electronic signature legislation, op, cit, p. 489.

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(3) Marie VARANDAT: consolidation des infrastructures a cles
publique avant leur prochain decoupage, droit de l'informatique, mars
2000, p. 22.

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(1) Com., 2 dec. 1997, D. 1998, 192; jcp 1998, ed E. p. 178.

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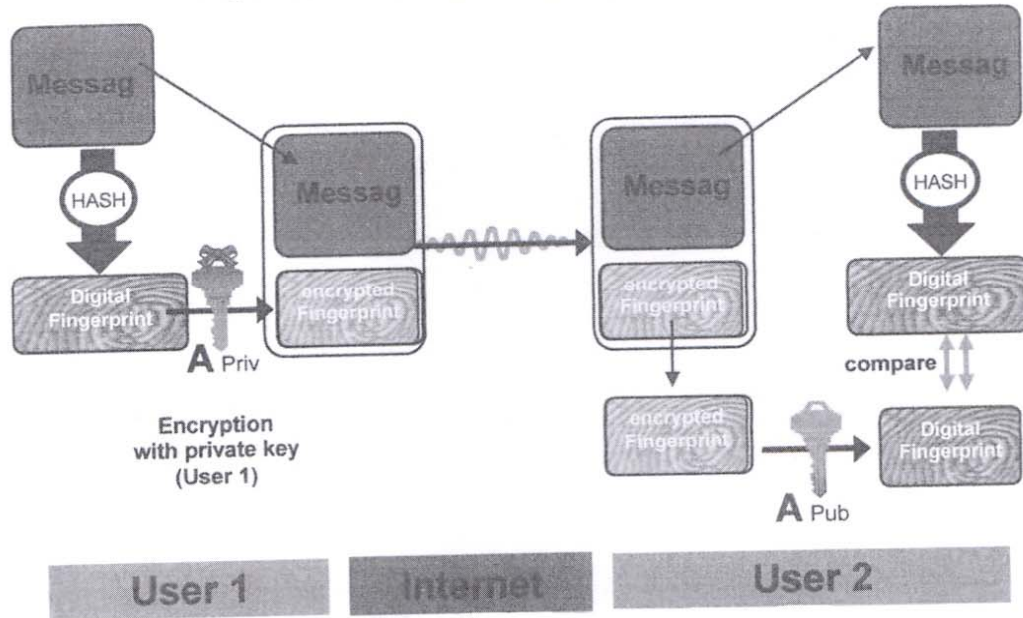
The electronic communication privacy act of 1986-ECPA.

Thomson west: E-commerce, the internet, and law cases and materials, American casebook series.

une facult'e d' 2000 "ou' ils de'finissent le courier e'lectronique comme E'change asynchrone des messages entre ordinateurs - p. breese G. kaufman, quide Juridique de l'internet et du commerce `electronique, vuibert.

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الرسم التالي يوضح سير العمل الأساسي لتوقيع الكتروني تم استخدامه لإرسال رسالة :



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جهاز قارئ البصمة من Microsoft



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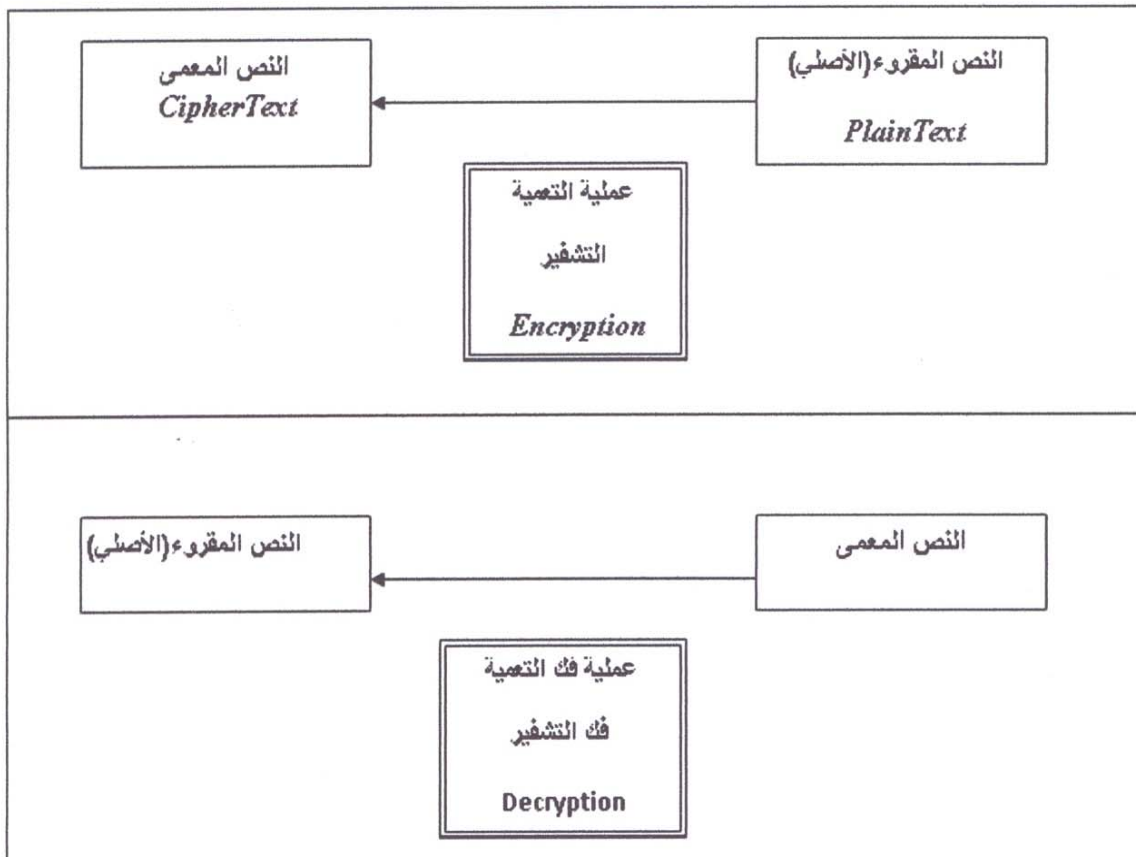
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التوقيع الالكتروني يتجنب كافة مشاكل التوقيع اليدوي



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